



CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

May 24, 2007

H.R. 964

Securely Protect Yourself Against Cyber Trespass Act

As ordered reported by the House Committee on Energy and Commerce on May 10, 2007

SUMMARY

H.R. 495 would prohibit the use of computer software (known as spyware) to collect personal information and to monitor the behavior of computer users without a user's consent. The bill would direct the Federal Trade Commission (FTC) to enforce the bill's provisions relating to spyware, including assessing and collecting civil penalties for unfair or deceptive business practices. Based on information provided by the FTC, CBO estimates that implementing the bill would increase spending by \$1 million in 2008 and \$7 million over the 2008-2012 period, assuming appropriation of the necessary amounts.

Enacting H.R. 495 could increase civil penalties and thus could affect federal revenues, but CBO estimates that such effects would not be significant in any year. Enacting H.R. 495 would not affect direct spending.

H.R. 964 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the resulting costs to states would fall significantly below the threshold established in UNRA (\$66 million in 2007, adjusted annually for inflation).

H.R. 964 would impose private-sector mandates, as defined in UMRA, on persons who use computer programs to collect certain information from another person's computer. In addition, by preempting certain state laws, the bill would impose a mandate on private entities by eliminating any private right of action under those laws. CBO estimates that the direct cost of complying with most of those mandates would be small and fall below the annual threshold for private-sector mandates established by UMRA (\$131 million in 2007, adjusted annually for inflation). However, due to a lack of information about the number of claims that would be filed by private entities under state laws in the absence of this legislation and the value of awards in such cases, CBO has no basis to determine the loss of compensation from awards or settlements, if any. Consequently, CBO cannot determine

whether the aggregate direct cost of all the mandates in the bill would exceed the annual threshold.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 964 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By Fiscal Year, in Millions of Dollars				
	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	1	1	1	2	2
Estimated Outlays	1	1	1	2	2

BASIS OF ESTIMATE

For this estimate, CBO assumes that the bill will be enacted during fiscal year 2007, that the necessary amounts will be provided for each year, and that spending will follow historical patterns for similar programs.

Implementing H.R. 964 would increase spending by the FTC to enforce regulations prohibiting the unlawful use of spyware, subject to the availability of appropriated funds. Based on information from the agency, CBO estimates that such activities would cost about \$1 million in 2008 and about \$7 million over the 2008-2012 period.

Enacting H.R. 964 could increase federal revenues from civil penalties assessed for committing unfair or deceptive acts or practices in commerce; however, based on information provided by the FTC, CBO estimates that any new collections would be less than \$500,000 a year.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 964 would preempt state laws that specifically regulate the use of spyware. This preemption constitutes a mandate as defined in UMRA. Some states may incur costs in the form of lost court settlements, however, because the bill would preserve the rights of states

to enforce their own consumer protection, trespass, contract, and tort laws, CBO estimates that any such costs would fall significantly below the threshold established in UMRA (\$66 million in 2007, adjusted annually for inflation).

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 964 would impose private-sector mandates, as defined in UMRA, on persons who use computer programs to collect certain information from another person's computer. The bill would require a person who transmits or executes an information collection program on someone's computer to receive prior consent from the owner or authorized user of that computer. An information collection program is defined in the legislation as computer software that (1) collects personally identifiable information and sends the information to someone else or uses such information for advertising purposes, or (2) collects information regarding the user's Internet activity and uses such information for advertising purposes, except for software collecting information within particular Web sites. The bill would require the Federal Trade Commission to provide the manner and form of the notice to obtain consent. In addition, the bill would require an information collection program installed on someone's computer to be easily identifiable and removable. Based on information provided by industry sources and the FTC, CBO expects that the direct costs of complying with those mandates would fall below the annual threshold established by UMRA for private-sector mandates (\$131 million in 2007, adjusted annually for inflation).

Also, by preempting state laws that expressly regulate the same activities covered by the bill, H.R. 964 would impose a mandate on private entities by eliminating any private right of action under those laws. The direct cost of the mandate would be the net loss of compensation from awards and settlements in cases where the private entity could recover full compensation for its injuries only through a private right of action that would be eliminated by H.R. 964. Because of uncertainty about the number of claims that would be filed in the absence of this legislation and the value of awards in such cases, CBO cannot estimate the cost of the mandate. Consequently, CBO cannot determine whether the cost of the mandate would exceed the annual threshold established by UMRA.

PREVIOUS CBO ESTIMATE

On May 7, 2007, CBO transmitted an estimate for H.R. 1525, the Internet Spyware Prevention Act of 2007, as ordered reported by the House Committee on the Judiciary on May 2, 2007. That bill would establish a new federal crime for the use of certain computer software (spyware) to collect personal information or to commit a federal criminal offense, and would authorize the appropriation of \$40 million over the 2008-2012 period to prosecute violations of the new law.

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